

THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL

SIGNING ON COULD MAKE ALL THE DIFFERENCE¹

ACCESSION MEANS BETTER PROTECTION

Throughout the 20th century the international community steadily assembled a set of guidelines, laws and conventions aimed at protecting the basic human rights and treatment of a growing number of people forced to flee their homes because of the fear of various forms of persecution – refugees.

The process, begun under the League of Nations in 1921, culminated in the 1951 Convention relating to the Status of Refugees and its subsequent 1967 Protocol. As at 1 July 2001, 140 countries had acceded the 1951 Convention and/or its 1967 Protocol. When compared to the almost universal accession to the Convention on the Rights of the Child, with 191 States Parties, and the 1949 Geneva Conventions with 189 States Parties, additional efforts are needed to ensure wider accession to the refugee instruments.

The year 2001 marks the 50th anniversary of the 1951 Convention. In commemoration, the first-ever meeting of States Parties will be held in Geneva on 12 and 13 December. In the run-up to the Ministerial Meeting, UNHCR is encouraging States to accede to the international refugee instruments and thereby reinforce the international framework for refugee protection.

Why accede to the 1951 Convention?

The refugee “phenomenon” is one of truly global proportions, affecting not only millions of disenfranchised people directly but also the policies and practices of virtually every government in the world. To help tackle it effectively, UNHCR believes that it is necessary to broaden the base of state support for these refugee instruments, ensuring that the protection provided to refugees is more universal in scope and the burdens and responsibilities of governments are equitably distributed and consistently applied.

¹ This brochure is also available from UNHCR's Department of International Protection at UNHCR or on UNHCR's website.

Who is a refugee?

According to Article 1 of the Convention, a refugee is someone who: "is outside his or her country of nationality or habitual residence; has a well founded fear of persecution because of his/her race, religion, nationality, membership in a particular social group or political opinion; and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution."

Why do refugees need protection?

Governments should protect the fundamental human rights of their citizens, such as their right to life and physical security. When governments are unwilling or unable to do so, individuals may suffer such serious violations of their human rights that they have to leave their homes, their communities and their families, to find safety in another country.

Since, by definition, refugees are not protected by their governments, the international community steps in to ensure the individual's rights and physical safety.

Who protects refugees?

Protecting refugees is the primary responsibility of States. Countries that have signed the 1951 Convention are obliged to protect refugees on their territory and treat them according to internationally recognized standards.

UNHCR's role complements that of States and it contributes to protecting refugees by:

- Promoting accession to, and implementation of, refugee conventions and laws
- Ensuring that refugees are treated in accordance with internationally recognized standards of law
- Ensuring that refugees are granted asylum and are not forcibly returned to the countries from which they fled
- Promoting appropriate procedures to determine whether or not a person is a refugee according to the 1951 Convention definition and/or other definitions found in regional conventions
- Seeking durable solutions to the phenomenon of refugees

What led States to negotiate the Refugee Convention?

In the aftermath of the First World War (1914-1918) millions of people fled their homelands in search of refuge. Governments responded by drawing up a set of international agreements to provide travel documents for these people who were, effectively, the century's first refugees.

Their numbers increased dramatically during and after the Second World War (1939-1945) as millions more were forcibly displaced, deported and resettled. International efforts to assist them also accelerated and, in July 1951, a diplomatic conference in Geneva adopted the Convention relating to the Status of Refugees.

Why is the Refugee Convention important?

The Convention is the only international agreement covering the most important aspects of a refugee's life. According to its terms, refugees deserve, as a minimum, the same standards of treatment enjoyed by other foreign nationals in a given country and, in many cases, the same treatment as nationals. The Convention also recognizes the international scope of the refugee phenomenon and the importance of burden sharing in trying to resolve it, and helps promote international solidarity and cooperation.

What does the 1951 Refugee Convention contain?

The Convention provides a basic definition of a refugee and spells out the legal status of refugees, including their rights and obligations. A key provision – Article 33 – stipulates that a refugee should not be returned to a country where he or she fears persecution (*non-refoulement*). This protection may not be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he or she is, or who, having been convicted in a final judgment of a particularly serious crime, constitutes a danger to that country.

What does the 1967 Protocol contain?

By adopting the 1967 Protocol, governments remove the geographical and time limitations that normally restrict application of the Convention to persons who became refugees because of events occurring in Europe before 1 January 1951.

What refugee rights are set out in the Convention?

Signatory states agree to apply international human rights standards and agreements towards refugees and confer other, specific rights which reflect the fact that refugees have lost the protection of their home governments.

These rights include:

- The right not to be forcibly returned, or refouled, to a country in which the refugee has reason to fear persecution (Article 33)
- The right not to be expelled, except under certain strictly defined conditions (Article 32)
- Exemption from penalties for illegal entry into the territory of a contracting State (Article 31)
- The right to work (Article 17)
- The right to housing (Article 21)

- The right to education (Article 22)
- The right to public relief and assistance (Article 23)
- The right to freedom of religion and free access to courts (Articles 4 and 16)
- Freedom of movement within the territory (Article 26)
- The right to be issued identity and travel documents (Articles 27 and 28)

What obligations does a refugee have?

Refugees are required to abide by the laws and regulations of their country of asylum as well as measures for the maintenance of public order.

MOST FREQUENTLY ASKED QUESTIONS ABOUT ACCESSION

Is a country that accedes to the Convention required to give permanent asylum to all refugees?

The protection provided under the Convention is not automatically permanent. A person may no longer be a refugee when the basis for his or her refugee status ceases to exist. And in cases where refugees arrive in large numbers, voluntary repatriation is normally the preferred solution, once conditions in the country of origin permit. There will also be situations, however, in which refugees stay permanently and integrate in their country of asylum.

Is a country obliged to protect criminals and terrorists claiming refugee status?

No. The Convention protects only persons who meet the criteria for refugee status. Certain categories are deemed not to be deserving of this protection, including:

- Persons who have committed a crime against peace, a war crime, crimes against humanity or a serious non-political crime outside the country of refuge
- Persons guilty of acts contrary to the purposes and principles of the United Nations

Does a country have to give land to refugees?

Nothing in the 1951 Convention nor its Protocol gives preferential treatment to refugees, by requiring signatory States to offer them land. They must simply apply the same criteria to refugees as they do to other categories of foreigners when negotiating the sale of land.

Can a soldier be a refugee?

A refugee is a civilian. A person who continues to take part in military activities against his or her country of origin from the country of asylum cannot be considered a refugee.

Can a draft evader be a refugee?

Every country has the right to call on its citizens to bear arms in periods of national emergency. However, citizens should have an equal right to conscientious objection. In cases where the option of conscientious objection is not observed, or where the conflict underway manifestly violates international norms, draft evaders who fear persecution (for example, on the basis of political opinions which authorities could impute to them) may be eligible for refugee status.

What is the difference between a refugee and an economic migrant?

An economic migrant enjoys the protection of his or her home government; a refugee does not. A migrant normally leaves a country voluntarily in search of a better life. Fearing persecution, a refugee has no choice except flight. Procedures are normally established following accession to the Convention to differentiate between refugees and migrants.

Can a country that has not signed the Convention refuse to admit a person seeking protection?

A refugee seeking protection must not be prevented from entering a country. Nor can a refugee be forcibly returned to his/her home country or any other country where he/she could face persecution. The principle of *non-refoulement* – barring the return of a refugee to a territory where his or her life or freedom is threatened – is considered a rule of customary international law. It is thus binding on all states without exception and regardless of whether they have acceded to the Refugee Convention or Protocol.

What is the link between UNHCR and the Refugee Convention?

UNHCR serves as the guardian of the Convention and its Protocol. States are expected to cooperate with UNHCR in ensuring that the rights of refugees, as defined in the Convention, are respected and protected.

Why is it important for States to accede to the Refugee Convention and its Protocol?

Accession:

- Demonstrates a country's commitment to treating refugees in accordance with internationally recognized legal and humanitarian standards
- Improves the possibility of refugees finding safety
- Helps to avoid friction between States over refugee questions. If a particular country is already a party to the Convention, its act of granting asylum should be understood by the refugee's country of origin as a peaceful, humanitarian and legal act, rather than a hostile gesture
- Demonstrates a country's willingness to share responsibility for refugee protection
- Helps UNHCR to mobilize international support for protection of refugees

I would like more information about

UNHCR AND ITS WORK:

Visit UNHCR's website at www.unhcr.ch. You can also consult *The State of the World's Refugees: Fifty Years of Humanitarian Action*, (Oxford University Press 2000).

How to accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol:

See *Procedures for Becoming A Party to the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* in this publication (UNHCR, Department of International Protection).

The definition of who is a refugee:

See *Protecting Refugees: Questions and Answers* (UNHCR Department of International Protection).

International laws relating to refugees:

Visit UNHCR's website at www.unhcr.ch. Also refer to the *Collection of International Instruments and Other Legal Texts Concerning Refugees and Displaced Persons* (UNHCR, Department of International Protection) and *The 1951 Refugee Convention: Questions and Answers* (UNHCR, Media Relations and Public Information Service).

The Ministerial Meeting of States Parties to the 1951 Convention and/or 1967 Protocol:

Contact the Secretariat, Ministerial Meeting 1951 Refugee Convention, c/o Permanent Mission of Switzerland, PO Box 92, rue de Varembe 9-11, 1211 Geneva 20, Switzerland. Phone: +41 22 749-2440; Fax +41 22 749-2588; E-mail: secretariat.51convention@eda.admin.ch

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